

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3

4 - - - - - x

5 SECURITIES INVESTOR PROTECTION  
6 CORPORATION,

7 Plaintiff,

8 v. Adv. Case No. 08-01789(SMB)

9 BERNARD L. MADOFF INVESTMENT  
10 SECURITIES LLC,

11 Defendant.

12 - - - - - x

13  
14 U.S. Bankruptcy Court  
15 One Bowling Green  
16 New York, New York  
17

18 August 17, 2015

19 11:07 AM  
20  
21  
22

23 B E F O R E :

24 HON STUART M. BERNSTEIN

25 U.S. BANKRUPTCY JUDGE

1     Hearing re: Lax & Neville LLP's request for extension of  
2     time to file answers in various adversary proceedings

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25     Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 BAKER HOSTETLER

3 Attorney for the Trustee

4 45 Rockefeller Plaza

5 New York, NY 10111

6

7 BY: NICHOLAS J. CREMONA, ESQ.

8

9 WINDELS MARX LANE & MITTENDORF LLP

10 Attorney for the Trustee

11 156 West 56th Street

12 New York, NY 10019

13

14 BY: JOHN J. TEPEDINO, ESQ.

15

16 LAX & NEVILLE LLP

17 1450 Broadway

18 35th Floor

19 New York, NY 10018

20

21 BY: BRIAN J. NEVILLE, ESQ.

22 RAQUEL KRAUS, ESQ.

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

THE COURT: Please be seated. Madoff?

Got an application to extend the time to file answers in it looks like 15 or 20 adversary proceedings?

MR. NEVILLE: Yes, good morning, Honor.

Actually this morning we just double checked the docket to make sure of the entry of all the case numbers on the letter that we had submitted on Friday was accurate, and it turns out that the list is somewhat inaccurate. I have an amended letter if I could approach and hand it to you?

THE COURT: Sure. Have you given a copy to counsel?

MR. NEVILLE: I have.

THE COURT: Thank you.

MR. NEVILLE: Your Honor, there's no substantive difference from anything that we've put in the letter, we've just changed the list from 21 to 14, and we indicated in a footnote the ones that we thought had been due today, they're actually due on September 18th.

THE COURT: Go ahead.

MR. NEVILLE: Your Honor, the basis of our application is that we had an associate at our firm for five years, Ms. Gabrielle Preto (ph). She was the associate at our firm that was primarily assigned to these cases, she had the primary point of contact with the clients, and she was

1 the primary point of contact with counsel for the trustee.

2 She left the firm on short notice, and we were  
3 just in a little bit of a bind. We called counsel for the  
4 trustee and asked for a short period of extension in which  
5 to file the answers, and the trustee declined to do so.

6 So, Your Honor, we're respectfully requesting a  
7 short extension of time to file these answers primarily so  
8 we can inform our clients of what needs to go on in the  
9 answer, what the state of the law is, and begin a discussion  
10 of when intend to do going forward.

11 THE COURT: When did the associate leave?

12 MR. NEVILLE: Her last day in the office was a  
13 week ago Tuesday.

14 THE COURT: Isn't anyone supervising her work to  
15 see if she prepared these answers?

16 MR. NEVILLE: Your Honor, both my partner and I  
17 were supervising her work, and there was a calendar, I  
18 treated our calendar saying that this answer was due.

19 I was away on vacation and it just -- the answers  
20 in these cases are not that substantive, we understand that  
21 the law.

22 Your Honor, I was one of the attorneys that argued  
23 the original motions to dismiss. My partner, Mr. Lax argued  
24 at the Second Circuit. We're well aware of the state of the  
25 law. The answers themselves will not be that complex.

1           The thing that I'm particularly concerned about is  
2       keeping in touch with the clients and informing them what we  
3       are doing.

4           THE COURT: Mr. Cremona?

5           MR. CREMONA: Good morning, Your Honor. Nicholas  
6       Cremona of Baker Hostetler appearing on behalf of the  
7       trustee.

8           Your Honor, I just would put the request in  
9       context. The first time I heard the request -- the first  
10      time I heard that an extension was needed was Friday at  
11      11:00 a.m. I received an email from Ms. Kraus of Lax  
12      Neville, and I'm happy to provide Your Honor with that  
13      email, as well as my response.

14          But it's important to note the email requested a  
15      blanket extension of the time to respond in 21 adversaries  
16      proceedings for a period of 90 days. To me --

17          THE COURT: The letter said 60 days.

18          MR. CREMONA: The letter said 60, but the email  
19      asked for 90, and I immediately responded saying, you know,  
20      it's unfortunate that the request was made on the eve of the  
21      deadline, but I've made clear to all counsel that once these  
22      orders were entered we were not extending these dates. And  
23      I'm happy to hand up these emails for Your Honor to review.

24          So, Your Honor, that is the first I had heard of  
25      the request, and it was seeking a 90-day extension when we

1 had made clear that we would not be extending these  
2 deadlines.

3 I think it's also important to note as,  
4 Mr. Neville already acknowledged, these are straightforward  
5 fictitious profits three year only cases where Your Honor's  
6 order was entered on June 2, which disposed of all of the  
7 defenses, and the --

8 THE COURT: Were all these adversaries involved?

9 MR. CREMONA: They were all subject to the omnibus  
10 proceeding --

11 THE COURT: Okay.

12 MR. CREMONA: -- which is why I think they've been  
13 on notice since June 2. The orders were then entered on  
14 July 16, which provided 30 days from that date.

15 I also independently emailed all counsel all along  
16 the process, as you know it was a arduous 45-day negotiation  
17 process to get the orders entered.

18 THE COURT: Let me ask you a practical question.

19 MR. CREMONA: Sure.

20 THE COURT: If I deny the request are you going to  
21 enter default judgments against these defendants?

22 MR. CREMONA: We would not do that, Your Honor.

23 It was just a matter of the request we felt was not  
24 reasonable in the time and the scope.

25 And just so you understand the trustee's position,

1 it's a matter of fairness, we've treated all counsel to  
2 similarly situated defendants in the same fashion. We've  
3 denied requests. And contrary to the statement in the  
4 letter we're not giving extensions to cases in the omnibus  
5 proceeding, with the exception of a handful, and that's only  
6 in the cases where we have settlement in principal or we  
7 have one where there was a deceased defendant.

8 So it is a matter of fairness and it is a matter  
9 of the defendants -- I think it's also worth pointing out,  
10 Your Honor and I had a conversation here in court January of  
11 2014 where we had people that wanted further extensions, and  
12 you know, the defendants have been in possession of the  
13 trustee's exhibit, via these complaints, since December  
14 2010. All we're talking about is whether or not the  
15 transfers can be admitted or denied, and the basis for which  
16 to answer has been in their possession for nearly five  
17 years.

18 I understand it's unfortunate timing that  
19 Ms. Preto was leaving the firm, but the trustee has to  
20 manage the cases in a fair and consistent manner.

21 THE COURT: Okay. I got it.

22 Look, I will grant an extension 'til  
23 September 18th to file the answers in the other case.

24 I understand what you're saying, Mr. Cremona, you  
25 have to deal with a thousand cases or however many are left.



1 I'm curious how many are left, because I've been signing  
2 dismissal order.

3 MR. CREMONA: Uh-huh.

4 THE COURT: But this is a situation where the firm  
5 was in a bind. Somebody left.

6 I agree with you that the legal issues have been  
7 paired down, but you still have a complaint left, and I  
8 don't know how you answer it or respond to claims that have  
9 been dismissed, but you still have a complaint out there.

10 There's no point not granting the extension,  
11 because I entered I default judgment that would not be  
12 sustained on appeal.

13 So, I'll give you 'til September 18th to answer in  
14 these 14 cases to go along with the (indiscernible) to  
15 answer in the other cases that you mentioned.

16 MR. CREMONA: Thank you, Your Honor.

17 THE COURT: All right. Why don't you just submit  
18 an order so we have a record of that.

19 MR. NEVILLE: We'll submit it when we get back to  
20 the office.

21 THE COURT: How many adversary proceedings are  
22 left?

23 MR. CREMONA: Roughly 565 on the innocent investor  
24 side, and that takes into account all the dismissals based  
25 on 546(e), and that's not including the bad faith cases.

1 THE COURT: And the subject of transferred cases.

2 MR. CREMONA: Exactly.

3 THE COURT: So how many cases in total are left?

4 MR. CREMONA: I would say approximately 625.

5 THE COURT: That's all?

6 MR. CREMONA: I believe so.

7 THE COURT: (Indiscernible) 1,000 last year.

8 MR. CREMONA: There were. We've had a number of  
9 successful mediations, as Your Honor is aware, a tremendous  
10 number of settlements in 2014, as well as post 546(e) we've  
11 dismissed about 120 cases, which were preference or secure  
12 only cases. So --

13 THE COURT: Okay.

14 MR. CREMONA: -- there's been a tremendous amount  
15 of progress since then.

16 THE COURT: All right. Thank you. Good seeing  
17 you.

18 MR. CREMONA: Thank you, Your Honor.

19 MR. NEVILLE: Thank you, Your Honor.

20 (Whereupon these proceedings were concluded at 11:47  
21 AM)

22

23

24

25

I N D E X

RULINGS

PAGE

Lax & Neville LLP's Request for Extension of Time  
to File Answers in Various Adversary Proceedings

8

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a  
true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South  
DN: cn=Dawn South, o=Veritext, ou,  
email=digital@veritext.com, c=US  
Date: 2015.08.18 10:12:28 -04'00'

Dawn South

AAERT Certified Electronic Transcriber CET\*\*D-408

Date: August 18, 2015

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501